IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10126 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL PARMANAND & CO.

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/10/2000

ORAL JUDGEMENT

Rule. Mr BY Mankad, learned AGP waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 18.9.2000 (Annexure "I") passed by the Deputy Secretary to the Government of Gujarat in Food, Civil Supplies and Consumer Affairs Department dismissing the petitioner's

appeal and confirming the order dated 25.5.2000 passed by the Collector by which the Collector had instructed the Bharat Petroleum Corporation Ltd. to stop supplying kerosene to the petitioner.

3. The petitioner was granted license for dealing in kerosene under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. By the impugned order dated 25.5.2000, the Collector issued instructions to the Bharat Petroleum Corporation Ltd. to stop supply of kerosene to the petitioner on the ground that the petitioner had not made arrangements for the storage godown at Junagadh. Similar order was passed by the Collector earlier and the petitioner had carried the matter in appeal before the State Government. The State Government remanded the matter to the Collector after making an observation that provision for a storage tank for kerosene did not appear to be mandatory for wholesale dealers, but they were liable to be paid less commission. After the order of remand, the Collector again passed the same order on 25.5.2000. Hence, the petitioner carried the matter in appeal again before the State Government. The State Government dismissed the appeal on the ground that the petitioner was given sufficient opportunity for installing storage tank, but the petitioner has failed to do so.

4. When this petition came for preliminary hearing, the learned counsel for the petitioner submitted that the petitioner had already constructed an underground storage tank in plot No. 19, Survey No. 29 of Dolatpara, Junagadh and that the NOC was awaited from the Collector. It was submitted that the storage tank was installed even before the State Government had dismissed the revision application, but the said fact was not considered by the revisional authority.

5. While issuing notice on 27.9.2000, this Court directed the respondents, particularly respondent No. 3-District Supply Officer, Junagadh to personally verify whether the storage tank is constructed or not and to submit the report in that behalf by the returnable date.

6. When the petition has reached hearing today, Mr BY Mankad, learned AGP appears fro the respondents and produces the letter dated 9.10.2000 from respondent No.3-District Supply Officer, Junagadh to the learned Government Pleader stating that respondent No. 3 had personally inspected the premises of the petitioner and found that on plot No. 19 in Survey No. 29, Opp. Marketing Yard in Dolatpara, the petitioner has

constructed one office room and two underground iron storage tanks covered by cement concrete. The said letter is permitted to be taken on record of these proceedings.

7. In view of the aforesaid factual finding, it appears to the Court that the impugned orders deserve to be set aside.

However, Mr Mankad, learned AGP submits that when the petitioner was given sufficient opportunity and time, but the petitioner himself had made delay in installing the storage tanks and, therefore, the authorities were justified in passing the impugned order at the relevant time.

8. Even if that be so, that only means that the authorities had to spend their time and energy unnecessarily which could have been avoided when the petitioner had installed the tanks earlier.

9. In view of the above, the petition is allowed. The impugned order dated 25.5.2000 (Annexure "F") passed by the Collector, Junagadh and the order dated 18.9.2000 (Annexure "I") passed by the State Government are quashed and set aside.

In view of the fact that it was the petitioner who was responsible for the delay in installing the tanks, the petitioner shall pay the respondents costs of this petition which are quantified at Rs.5,000/- (Rupees five thousand only), which shall be paid to respondent No. 2 within one month from today.

Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

October 10, 2000 (M.S. Shah, J.)
sundar/-